

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

AMRIT RAI SOOD,—Petitioner.

versus.

THE STATE OF PUNJAB ETC.,—Respondents.

Civil Writ No. 3389 of 1968

April 24, 1974.

Punjab Civil Services (Punishment and Appeal) Rules (1952)—Rule 8—Official causing pecuniary loss to Government by negligent acts done prior to re-organisation—Competent authority to take action thereto—Whether the Government to whom he is allocated after re-organisation—Negligent acts done in relation to territories forming part of Haryana—Official allocated to the State of Punjab—State of Haryana holding enquiry and recommending punitive action—Enquiry proceedings not disclosed to the delinquent official—State of Punjab—Whether can punish the official without recording its own reasons for such punishment.

Held, that the authority competent to take disciplinary action against a delinquent official is only the Government to whom he stands allocated and under whose administrative control he works after re-organisation. The official having been allocated to Punjab after reorganisation is no longer in the service of the Haryana Government and any inquiry made by that Government against him is without jurisdiction. It is only the Punjab Government which can hold an enquiry, no matter that it relates to a cause that arose before the reorganisation and in a territory now falling within the jurisdiction of Haryana. There is no provision in the Act which provides for the transfer of pending inquiries and it will be violative of the rules of natural justice if inquiry is held by one authority not competent to do so and decision is given thereon by another without making the recommendations of the inquiring authority available to the delinquent official. The function of the competent authority proposing to take punitive action under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, is beyond doubt quasi-judicial and the necessary requisites of such a function are that the authority must make a judicial approach which envisages that it acts with an independent and open mind, gives an adequate opportunity to the delinquent official to submit his explanation and gives reasons for the ultimate decision taken. The approach cannot be held to be judicial where an inquiry is made by some other authority, recommendations of which are not disclosed to the person affected thereby and no reasons are recorded by the competent authority as to why it is accepting those recommendations.

(Paras 3 and 4)

Petition Under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate writ, order or

direction be issued quashing the impugned order dated 25th May, 1968 conveyed to the petitioner on 16th July, 1968 (Annexure 'B') and further praying that during the pendency of the writ Petition the operation of the impugned order be stayed and the petitioner be permitted to draw his salary without any deduction being made therefrom.

M. R. Agnihotri, Advocate, for the petitioner.

J. S. Wasu, Advocate-General (Punjab) P. K. Gulati, Advocate with him—for the respondents.

JUDGMENT

SOOD, J.—Amrit Rai Sood, retired from Government service as Sub-Divisional Officer, Irrigation Department. He challenges in this writ petition the validity of an order of the Governor of Punjab passed on 25th May, 1968, (Copy annexure 'B'), whereby sanction was accorded for the recovery of Rs. 5,505 (rupees five thousand five hundred and five only) from his salary on account of excess payment for the allegedly superfluous earth work in Sirsa Division when he was posted there before reorganisation of the composite Punjab under the Punjab Reorganisation Act, 1966, referred to hereinafter as the Act. Before reorganisation, the petitioner, who was an employee of the Punjab Government had been sent to work under the Beas Project and he continued there till his retirement. By an order, dated 25th March, 1968, he was compulsorily retired with effect from 14th August, 1968, but this order was quashed by the High Court on 11th October, 1968. It appears that while the petitioner was working as Sub-Divisional Officer in Fatehabad Sub-Division, of Sirsa Revenue Division, now falling within the territory of Haryana State, he was incharge of the work of remodelling of some distributary. The audit report disclosed an excess expenditure, but by the time the report came the petitioner had been transferred and was working under the Beas Project. It was proposed to effect recovery of the excess payment from him in terms of the audit report and a notice under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, was consequently served on him on 6th December, 1965, calling upon him to show cause as to why the recovery be not made. Rule 8 is in the following terms:—

- "8. Without prejudice to the provisions of rule 7, no order under clause (i), (ii) or (iv) of rule 4 shall be passed imposing a penalty on a Government servant, unless he

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has been given an adequate opportunity of making any representation that he may desire to make, and such representation has been taken into consideration:

Provided that this condition shall not apply in a case where an order based on facts has led to his conviction in a criminal court or an order has been passed superseding him for promotion to a higher post on the ground of his unfitness for the post on account of the existence of unsatisfactory record:

Provided further that the requirements of this rule may, for sufficient reasons to be recorded in writing, be waived where it is not practicable to observe them and where they can be waived without injustice to the officer concerned."

(2) Recovery from pay of a Government servant of any pecuniary loss caused by negligence or breach of order is one of the penalties enumerated in rule 4 of the said Rules. The petitioner submitted his explanation to the show-cause notice. He was asked even to be heard in person as well, but he failed to avail of the opportunity as, according to him, he was not being granted leave by the authorities of the Beas Project. On the explanation so furnished comments of the Executive Engineer, Sirsa Division, in the district of Hissar, Haryana, under whose jurisdiction the petitioner was working at the relevant time when excess payment was made were called by the Chief Engineer, Irrigation Works, Haryana. They had to come through the Superintending Engineer and the processing in the office took a long time. The Executive Engineer did not submit his comments in spite of several reminders issued by the Chief Engineer. It was only on 16th August, 1967, that the Superintending Engineer agreeing with the recommendation of the Executive Engineer reported to the Chief Engineer that the recovery of the amount of Rs. 5,578 be effected. The explanation of the petitioner was found by these authorities to be unsatisfactory. Secretary to Government, Haryana, Public Works Department, then wrote a letter on 9th April, 1968, to his counterpart in the Punjab State requesting that necessary orders for recovery from the petitioner may be issued. An immediate action in this regard by the Punjab Government was suggested as the petitioner was to attain the age of 55 years on 13th August, 1968, it being further stated in the letter that in case an

extension of three years was given to the officer he would be retiring on 13th August, 1971. Orders of the Punjab Government were necessary as the petitioner had been allocated to that State under the Act. On receipt of the letter from the Haryana Government, nothing else was done by the Punjab Government except that the impugned order was issued almost mechanically following the advice of the former.

(3) After hearing Mr. M. R. Agnihotri, learned counsel for the petitioner, I am of the view that the order under attack cannot be sustained. It cannot be gainsaid that the authority competent to take disciplinary action against the petitioner is only the Punjab Government to whom the petitioner stood allocated and under whose administrative control he was working after reorganisation.

(4) The sole question that arises for determination is whether it was open to the Punjab Government to accept the recommendation of the Haryana Government for the penal action against the petitioner by ordering recovery of the amount from his salary without applying its own independent mind. After reorganisation, the petitioner was no longer in the service of the Haryana Government and any inquiry made by that Government against the petitioner was without jurisdiction. It was only the Punjab Government which could hold an enquiry, if so advised, no matter that it related to a cause that arose before the reorganisation and in a territory now falling within the jurisdiction of another State, namely, Haryana. There is no provision in the Act, which provides for the transfer of pending inquiries and it will be violative of the rules of natural justice if inquiry is held by one authority not competent to do so and decision is given thereon by another without making the recommendations of the inquiring authority available to the delinquent official. The function of the competent authority proposing to take punitive action under rule 8 of the Rules is beyond doubt quasi-judicial and the necessary requisites of such a function are that the authority must make a judicial approach which envisages that it acts with an independent and open mind, gives an adequate opportunity to the delinquent official to submit his explanation and gives reasons for the ultimate decision taken. The approach cannot be held to be judicial where an inquiry is made by some other authority, recommendations of which are not disclosed to the person affected thereby and no reasons are recorded by the competent authority as to why it is accepting those recommendations. In the instant case the

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explanation given by the petitioner was never considered by the punishing authority, but the Haryana Government alone which had no disciplinary powers in regard to the petitioner. No reasons are given by the State Government and the only order passed is Annexure "B", which is not the least speaking one.

(5) In the result, the conclusion is inevitable that the impugned action of ordering recovery of any amount from the salary of the petitioner is violative of the rules of natural justice and cannot be upheld. The writ petition is, therefore, allowed with costs and an appropriate writ directed to issue quashing the impugned order (Annexure "B") and prohibiting the respondents from recovering any amount from the petitioner in pursuance of the said order. The costs are assessed at Rs. 100.

N. K. S.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Gurdev Singh, J.

MANAGEMENT OF THE AMBALA CANTONMENT ELECTRIC SUPPLY CORPORATION LTD.,—Appellant.

versus.

WORKMEN OF THE AMBALA CANTONMENT ELECTRIC SUPPLY CORPORATION LTD.,—Respondents.

Letters Patent Appeal No. 713 of 1970

April 27, 1972.

Industrial Disputes Act (XIV of 1947)—Sections 10(1) and (4), 25FF and 33(c)—Indian Electricity Act (IX of 1910)—Sections 6 and 7—Workmen's demand for continuity in service and protection of wages referred to Industrial Tribunal—State Government unaware of the demand of the workmen regarding retrenchment compensation—Tribunal—Whether can award such compensation—Section 25FF—Whether violative of Article 14 of the Constitution.

Held, that sub-section (4) of section 10 of the Industrial Disputes Act, 1947, lays down that when an industrial dispute is referred to the Tribunal, it shall confine its adjudication to those points that have been specified by the Government. However, the section also authorises the Tribunal to go